

17 assistance process at Mack was manipulated by
18 Mack employees through delays in responses on
19 cross-checks?
20 A. Yes.

49. PAGE 384:03 TO 384:09 (RUNNING 00:00:23.000)

03 Q. (By Mr. Parks) Sir, we were talking
04 about the manipulation of the sales assistance
05 process at Mack through delaying responses to
06 cross-checks and requests for sales assistance.
07 And my question to you, sir, is, was this a
08 common practice within Mack during the period
09 1999 through 2003?

50. PAGE 384:11 TO 385:14 (RUNNING 00:01:10.100)

11 A. Yes, I believe it was.
12 Q. Would you say that it happened
13 hundreds of times over that period?
14 A. It happened a lot in my district,
15 and if you multiply that by four districts, it
16 could have happened hundreds of times.
17 Q. Sir, what is a verbal in the context
18 of the Mack sales assistance process?
19 A. That is if a dealer calls and says
20 they're on a deal, and they say, "What do you
21 think I can use?" And you say, "Use" -- forget
22 about the model. Whatever the factory discount
23 is over and above that would be sales
24 assistance.

00385:01 You might say, "Use two percent.
02 I'll give you a verbal on two percent," or
03 someone would give you a verbal on two percent
04 or five percent or whatever.
05 And then you're supposed to come in
06 for sales assistance, but if a customer is
07 sitting in the office, sometimes you could do
08 that.
09 Q. Did people at Mack, that's Mack
10 district managers and regional vice presidents,
11 use verbals, as you've defined them, to
12 manipulate the sales assistance process at Mack
13 to steer deals away from certain Mack dealers
14 and to other Mack dealers?

51. PAGE 385:17 TO 388:05 (RUNNING 00:02:28.600)

17 A. I know they did.
18 Q. How did that process work? How were
19 verbals used to manipulate the sales assistance
20 process at Mack and steer deals away from
21 certain dealers and to others?
22 A. If a dealer come in for sales
23 assistance and talked to his district manager,
24 and the district manager -- or maybe even called
00386:01 -- some dealers had access to the regional vice
02 president. They could talk to him direct, and
03 the regional vice president might give them a
04 number and not extend that number to somebody
05 else.
06 Or when you'd come in for sales
07 assistance, you were told: There's nothing
08 established. Because that was a verbal, there's

09 nothing in writing that you could actually check
 10 on or have a document to prove that there was
 11 something that was already given.

12 So by not having it there, even if
 13 you told a dealer there was nothing established,
 14 the dealer at that point -- whether you told a
 15 dealer there was something established or not,
 16 it always could affect the way they priced the
 17 vehicle.

18 Because you told them there's
 19 nothing established, they're thinking, "There's
 20 nobody on the deal. I'm going to try to make a
 21 little more money." Somebody over here actually
 22 had a verbal on it, and they just knocked their
 23 legs off on the deal. And it could work just
 24 the opposite way, too.

00387:01 Q. Sir, did that happen in your
 02 experience?

03 A. Oh, that's happened on several
 04 occasions.

05 Q. Would you say it was a common
 06 practice in Mack during the period 1999 to 2003
 07 in the central region?

08 A. I would say it happened a lot.

09 Q. Have you ever heard the manipulation
 10 of sales assistance at Mack referred to by
 11 anyone at Mack as "the game"?

12 A. Yes, sales assistance. And district
 13 managers, some of the district managers even
 14 said, "It's just a game. It's a game." And the
 15 dealers said, "It's a game."

16 Q. Which district managers called the
 17 manipulation of sales assistance a game or the
 18 game?

19 A. There were various at different
 20 times at different meetings, you know, topics
 21 come up. I expressed it was a game to Jeff
 22 Yelles on occasion, that we're managing a lie.
 23 The facts and figures aren't correct.

24 And his response was: "Do the best
 00388:01 you can."

02 Q. Sir, was another way the sales
 03 assistance process at Mack was manipulated by
 04 Mack employees by using a certain customer name
 05 on units that were actually ordered for stock?

52. PAGE 388:07 TO 388:21 (RUNNING 00:00:42.400)

07 A. They -- that's a I guess a different
 08 area, but that could be done. A dealer could
 09 order trucks that aren't really stock but apply
 10 for sales assistance for ABC Trucking, get that
 11 sales assistance, and then the trucks would be
 12 net billed to that dealer less the sales
 13 assistance, and then that dealer could sell that
 14 truck to somebody else.

15 And/or if he didn't sell all of
 16 those trucks, he was floor-planning a reduced
 17 amount of money, which, in turn, there's cost to
 18 money. That comes into saving somewhere along
 19 the line, and those discounts, those savings
 20 could be used to fund another deal. There's

21 just a lot of things that you could do.

53. PAGE 389:24 TO 390:04 (RUNNING 00:00:21.900)

24 Q. Sir, the situation you've just
00390:01 talked about where a truck would be ordered in a
02 particular customer's name that was actually a
03 stock truck, was that done with the knowledge of
04 and support of employees at Mack Trucks?

54. PAGE 390:06 TO 390:20 (RUNNING 00:00:35.500)

06 A. That was done company-wide. The VPs
07 knew about it. It also in some cases affected
08 the production of that truck. They would rather
09 build a sold unit that had a customer's name on
10 it than a unit for stock.

11 And some of the dealers did that all
12 the time. Some of them did it some of the
13 time. But Mack Trucks knew they were doing
14 that, and it used to drive, I know, John Tanzos
15 crazy when we went into a rate meeting. We
16 talked about that earlier.

17 Q. Sir, was the sales assistance
18 process at Mack also manipulated by adjustment
19 of the number of trucks on a deal as the deal
20 progressed?

55. PAGE 390:22 TO 391:14 (RUNNING 00:00:41.200)

22 A. The sales assistance could have
23 changed on the number of trucks. It started off
24 to be a 10-truck deal, and it grows to be a 15-
00391:01 to 20-truck deal, the level of sales assistance,
02 there could have been breaks in there, you know,
03 10 to 14, 15 to 20, and that could have affected
04 the sales assistance.

05 Q. Were there ever situations when a
06 certain number of trucks would be identified on
07 the initial sales assistance truck but at the
08 last moment, another sales assistance request
09 would be put in with a different number of
10 trucks, a greater discount would be awarded for
11 that larger number of trucks, and the deal would
12 then close without other dealers who had been on
13 the deal be given the benefit of the additional
14 sales assistance?

56. PAGE 391:16 TO 394:02 (RUNNING 00:02:38.000)

16 A. That has happened.

17 Q. So let me just ask you, under the
18 Mack system for sales assistance, if there were
19 two dealers on a deal, and Mack determines to
20 increase sales assistance for one of the
21 dealers, is the other dealer or the other
22 dealer's district manager automatically notified
23 of the increase, or does that dealer or district
24 manager have to just repeatedly check up to see
00392:01 if there had been an increase?

02 A. There was no way of checking, unless
03 the other, the second district manager, would
04 advise the first district manager. So you had
05 to call. You would call five times a day, ten
06 times a day.

07 Q. Was there anything in the second
08 district manager's personal financial interest
09 to notify the other district manager under those
10 circumstances?

11 A. Oh, yes. The truck sales went
12 towards his objective and year-end bonuses
13 absolutely.

14 Q. I want to make sure I understand.
15 So if one district manager was told: We're
16 going to increase sales assistance on this deal
17 for your dealer, it would or would not be in
18 that district manager's personal financial
19 interest to call the other district manager, and
20 tell them: Oh, by the way, the deal's been
21 changed. You now have more sales assistance.
22 You should tell your dealer.

23 A. It would not be in the benefit of
24 the other district manager. It would benefit
00393:01 the district manager that was sort of
02 controlling the deal and sales assistance if he
03 didn't advise the other district manager or the
04 other dealer.

05 Q. Is that because district managers
06 are compensated based on the sales made by the
07 dealers in their district as opposed to the
08 trucks actually sold in their territories?

09 A. That is correct.

10 Q. Are you aware of situations where
11 district managers refused or delayed in telling
12 other district managers that sales assistance on
13 a particular deal had been increased?

14 A. That has happened, yes.

15 Q. And in those circumstances was the
16 delay designed to give the dealer whose sales
17 assistance had been increased an advantage in
18 getting the deal over the other dealer who
19 wasn't notified?

20 A. That is part of the game.

21 Q. Sir, was the sales assistance
22 process at Mack also manipulated by the
23 submission of applications for sales assistance
24 under different corporation names within a
00394:01 corporate family involving the same
02 transaction --

57. PAGE 394:04 TO 394:13 (RUNNING 00:00:29.200)

04 Q. -- or deal?

05 A. That could happen. It has happened.

06 Q. Sir, was the sales assistance
07 process at Mack also manipulated by the granting
08 of more sales assistance on one deal, and then
09 an instruction by a Mack employee to a dealer to
10 borrow some of the sales assistance granted on
11 the deal and use on a different deal so that a
12 sales assistance request didn't have to be
13 submitted on the second deal?

58. PAGE 394:15 TO 394:21 (RUNNING 00:00:21.000)

15 A. John McCafferty told me had done
16 that. That's one of the things he does, has
17 done. I don't know if he does it today, but he

18 has done that.
19 Q. And was the purpose of that tactic
20 to avoid having to equalize other dealers who
21 might be on that second deal?

59. PAGE 394:23 TO 395:08 (RUNNING 00:00:38.400)

23 A. That way there's no record of sales
24 assistance -- of a sales assistance increase or
00395:01 the real amount that that dealer would be
02 using. It becomes a dealer accounting issue at
03 that point.
04 Q. Were all of these manipulations of
05 the sales assistance process at Mack used by
06 Mack district managers and regional vice
07 presidents to steer deals away from certain Mack
08 dealers and towards other Mack dealers?

60. PAGE 395:10 TO 395:14 (RUNNING 00:00:18.600)

10 A. I believe that in many cases it was.
11 Q. Sir, do you recall attending any
12 meeting where the subject of using sales
13 assistance to control dealers was discussed by
14 Jeff Yelles and John McCafferty?

61. PAGE 395:16 TO 396:23 (RUNNING 00:01:16.900)

16 A. Yes, I do. I was --
17 Q. Tell me about that meeting.
18 A. It was a meeting in Roanoke,
19 Virginia called a round table meeting, and it
20 really was supposed to be a brainstorming
21 meeting. And we were discussing programs that
22 we should come up with to increase truck sales.
23 And I remember Jeff Yelles was
24 sitting there, and he -- and he was laughing,
00396:01 and he said: "Hey, John, tell everybody how you
02 control your dealers."
03 And John got a big grin on his face
04 and laughed, and he was chuckling, and he says,
05 "I control them with sales assistance."
06 And Jeff laughed, and I had Frank
07 Schriffert sitting to my left and Jim Waterbury
08 a seat away, and they were appalled that he was
09 allowed to make that statement. They -- they
10 just thought who is -- Frank's remark was, "Who
11 does he have pictures of?"
12 Q. Who was Frank talking about, who
13 does "he" have pictures of?
14 A. John McCafferty.
15 Q. What did you understand --
16 A. Kevin Flaherty was sitting next to
17 Jeff Yelles when that was said.
18 Q. Kevin Flaherty was at this meeting?
19 A. Kevin Flaherty was sitting to the
20 left of Jeff Yelles.
21 Q. Did Kevin Flaherty have any reaction
22 when John McCafferty told the group that he used
23 sales assistance to control his dealers?

62. PAGE 397:01 TO 397:07 (RUNNING 00:00:22.700)

00397:01 A. Didn't say a word.
02 Q. Was Mr. Yelles offering this bit of

03 information through Mr. McCafferty to the group,
 04 in your impression, just for entertainment's
 05 sake, or was there some purpose, as you
 06 understood it, to having Mr. McCafferty offer
 07 this information.

63. PAGE 397:09 TO 398:03 (RUNNING 00:00:55.100)

09 A. My thought on that was, I mean, it
 10 was a message: We need to start controlling our
 11 dealers with sales assistance, but...

12 Q. Sir, did Jeff Yelles ever tell you
 13 to withhold sales assistance in order to exert
 14 control over a dealer?

15 A. Yes, actually he did.

16 Q. Tell me about that.

17 A. I can't remember the specific deal,
 18 but it was with regard to Danny Ralich from
 19 R & R, and he also said it with Dan Ralich from
 20 Youngstown; and in that conversation: You need
 21 to threaten them with sales assistance. That's
 22 the only thing they understand, is what he said.

23 Q. Mr. Yelles said that to you?

24 A. Yes, he did.

00398:01 Q. Was he telling you, as you
 02 understood it, to use sales assistance as a tool
 03 to control the dealer by withholding it?

64. PAGE 398:05 TO 400:13 (RUNNING 00:02:20.600)

05 A. That's what he meant by that
 06 statement.

07 Q. Sir, in your experience, was the
 08 amount of sales assistance awarded on a deal
 09 typically based on the competitors on the deal
 10 or the prices they were offering?

11 A. In some cases, it was; in many cases
 12 it was not.

13 Q. Is it fair to say that that was
 14 uncommon, that it would be based on the
 15 competitors or the prices the competitors were
 16 offering?

17 A. I wouldn't say it was uncommon, but
 18 Jeff Yelles, one of his comments all the time
 19 was: Well, let's -- if I wanted three or four
 20 percent, whatever the number was, and he says:
 21 Well, they're good guys. They work with us. Go
 22 ahead and give it to them.

23 That's so no -- it wasn't a matter
 24 of being on a competitive deal. "They're good
 00399:01 guys."

02 Q. Did Jeff Yelles ever tell you he
 03 awarded sales assistance based on a list of
 04 dealers that would, quote, work with us, meaning
 05 work with Mack, unquote?

06 A. He didn't tell me a list of dealers,
 07 but he made that remark when we'd come in for
 08 sales assistance.

09 Q. Did Jeff Yelles tell you to cross --
 10 to cross -- to perform cross-checks, even when
 11 there was a discount established by a Mack
 12 program, as a courtesy?

13 A. Yes, he did. That question come up

14 -- we came out with some programs, and John
 15 McCafferty still wanted cross-checks. And there
 16 was some conversation on that.

17 And I said, "Jeff, bottom line,
 18 should we be cross-checking program discounts
 19 with other district managers in other areas?"

20 "Well, as a courtesy," he said we
 21 should.

22 Q. Did -- did you develop any
 23 understanding as to how that would be a courtesy
 24 to do that or why that would be a courtesy to do
 00400:01 that?

02 A. It was only a courtesy, and there's
 03 no mistake in my mind about that. It happened
 04 on numerous occasions, that you called a
 05 district manager, and if his dealer wasn't on
 06 the deal, he'd put him on the deal.

07 Q. Sir, was the cross-check -- did the
 08 cross-check process at Mack operate as an early
 09 warning system to dealers -- to district
 10 managers and dealers when other dealers were
 11 trying to sell trucks into their AOR?

12 A. That would be a fair description of
 13 it, yes.

65. PAGE 400:23 TO 401:18 (RUNNING 00:01:00.100)

23 Q. Sure. Was the sales assistance
 24 process prior to 1998, let's just say, used by
 00401:01 Mack to protect Mack dealers from facing
 02 competition from other Mack dealers in their own
 03 AORs?

04 MR. HEEP: Objection.

05 A. I don't know that it was as bad. It
 06 was probably done, but it seemed to have got
 07 worse after that point. I mean, I wasn't in
 08 that district until, what, '97 or so, and it
 09 really heated up.

10 I was a district manager earlier in
 11 my career with Mack in western Pennsylvania, and
 12 it didn't seem to be as bad. There were some
 13 changes there with a "snooze you lose," with a
 14 couple different unwritten understandings with
 15 sales assistance, and...

16 Q. Sir, did some Mack dealers have
 17 unwritten understandings with other Mack dealers
 18 that they wouldn't compete in each other's AORs?

66. PAGE 401:20 TO 402:12 (RUNNING 00:00:49.200)

20 A. There were -- there were some Mack
 21 dealers that -- and I've heard them called
 22 gentlemen's agreements, where they wouldn't
 23 compete in other dealers' areas, and if a dealer
 24 came there, they'd price the truck X number of
 00402:01 dollars higher and sent that out.

02 And I can't -- that was -- those
 03 were topics you might have heard at a meeting
 04 cocktail party and things like that, so to give
 05 you a specific deal today, I couldn't do that.

06 Q. These were conversations you
 07 overheard among dealers at cocktail parties?

08 A. Like side-bar conversations and that

09 kind of stuff.
10 Q. Sir, did Mack use sales assistance
11 to protect certain Mack dealers from competition
12 from other Mack dealers in their AORs?

67. PAGE 402:14 TO 402:17 (RUNNING 00:00:08.000)

14 A. Yes.
15 Q. Was Chicago Mack one of the dealers
16 Mack protected in this fashion?
17 A. I had some deals --

68. PAGE 402:19 TO 403:07 (RUNNING 00:00:28.000)

19 A. I had some deals through the old
20 Fort Wayne Mack through -- I can't give you the
21 names right now because I don't have the files.
22 If I had all the files laid out here, I could
23 spend three days going through them. Flag
24 City. There were a number of dealers that sold
00403:01 in that Chicago area and they weren't equalized
02 with sales assistance, including Pozzo Mack at
03 one point.
04 Q. So is the answer to my question yes,
05 Chicago Mack was one of the dealers that Mack
06 protected by using the sales assistance
07 process --

69. PAGE 403:09 TO 403:15 (RUNNING 00:00:15.500)

09 Q. -- in its own AOR?
10 A. Sales assistance, yes.
11 Q. Okay. Sir, was Nextran one of the
12 dealers that Mack protected in this fashion;
13 that is, using sales assistance to protect a
14 dealer from competition from other Mack dealers
15 in that Mack dealer's own AOR?

70. PAGE 403:17 TO 404:07 (RUNNING 00:00:37.500)

17 A. My experience with Nextran, there
18 was -- there were a couple deals I cross-checked
19 with Mike Maddox, and there was a delay. There
20 was one in there, and it's in those records
21 somewhere, where he sent back and he said like
22 -- I'm not quoting this -- it's like: Payback's
23 a bitch. Dumped one in my back yard, you know,
24 and that kind of stuff, those kind of things.
00404:01 But just delays in sales assistance
02 or ring-around-the-rosy type thing, that
03 happened.
04 Q. Okay. Is the answer to my question
05 yes, Nextran was a dealer that Mack protected in
06 its own -- protected Nextran's AOR by using the
07 sales assistance process?

71. PAGE 404:09 TO 404:14 (RUNNING 00:00:15.700)

09 A. Yes.
10 Q. So was Gabrielli Mack one of the
11 dealers that Mack protected by using sales
12 assistance to eliminate or reduce the
13 competition Gabrielli faced in its own AOR from
14 other Mack dealers?

72. PAGE 404:16 TO 405:02 (RUNNING 00:00:20.400)

16 A. And you're talking sales assistance
17 in terms of terms, conditions, delays --
18 Q. Terms, conditions --
19 A. Yes.
20 Q. -- the whole sales assistance
21 process, that's what I'm talking about, and the
22 manipulations we've discussed about it.
23 A. Yes.
24 Q. Sir, was Central Indiana Mack one of
00405:01 the dealers that Mack protected using the sales
02 assistance manipulations we've described?

73. PAGE 405:04 TO 405:04 (RUNNING 00:00:00.667)

04 A. Yes.

74. PAGE 407:10 TO 407:22 (RUNNING 00:00:38.000)

10 Q. Now, sir, have heard Jeff Yelles
11 tell you that net-net billing; that is, billing
12 that included the volume bonus netted out, as
13 we've used that term earlier today in the
14 deposition, that net-net billing was only
15 available to a Mack dealer selling to a customer
16 located in his own AOR?
17 A. Yes, he did say that.
18 Q. Okay. Now, did a dealer who
19 receives net-net billing -- or does a dealer who
20 receives net-net billing have a competitive
21 advantage over another dealer on the deal who
22 does not?

75. PAGE 407:24 TO 408:05 (RUNNING 00:00:17.600)

24 A. Yes, it could be.
00408:01 Q. Was this, in other words, the
02 in-AOR-only for net-net billing policy, was that
03 policy another way that Mack protected Mack
04 dealers from competition from other Mack dealers
05 in their own AOR?

76. PAGE 408:07 TO 408:07 (RUNNING 00:00:06.800)

07 A. Yes.

77. PAGE 408:11 TO 408:16 (RUNNING 00:00:16.000)

11 Q. Sir, did Mack from time to time make
12 highly discounted trucks available to dealers,
13 but with the restriction that those trucks could
14 only be sold to customers in the dealer's own
15 AOR?
16 A. That has happened.

78. PAGE 408:19 TO 409:05 (RUNNING 00:00:30.700)

19 Q. Did the dealers who received those
20 highly discounted trucks have a competitive
21 advantage over dealers who did not?
22 MR. HEEP: Same Objection.
23 A. Oh, yeah, if they wouldn't equalize
24 the discount, they would have, yes.
00409:01 Q. Were these in-AOR-only programs,
02 like the ones you just described existed,
03 another way that Mack protected dealers from

04 competition from other Mack dealers in their own
05 AORs?

79. PAGE 409:07 TO 409:08 (RUNNING 00:00:02.800)

07 A. It may very well have been if they
08 had a price advantage.

80. PAGE 409:10 TO 410:04 (RUNNING 00:00:44.700)

10 Who's Tom Kelly?

11 A. Tom Kelly was -- I don't know if
12 he's executive, executive vice president. He's
13 vice president of marketing.

14 Q. And did you ever hear Tom Kelly make
15 any statement about protecting dealers from
16 competition by other Mack dealers in their own
17 AORs?

18 A. Tom Kelly made a statement at the
19 last fly-in meeting I attended in Chicago that
20 he knows we might be breaking some law, but we
21 need to start respecting AORs.

22 Q. What did you understand it to mean
23 by "respecting AORs"?

24 MR. HEEP: Objection, no foundation.

00410:01 A. Respecting, in other words, not
02 selling trucks in other dealers' AORs.

03 Q. Dealers staying in their own AORs.

04 A. Yes.

81. PAGE 412:05 TO 412:22 (RUNNING 00:00:50.600)

05 Q. Did Jeff Yelles target specific
06 dealerships for consolidation in your district
07 as part of Network 2000?

08 A. Well, he -- he told me I had to get
09 it moving. I had to plant some seeds to see the
10 if some dealers would sell, and I needed to get
11 that moving.

12 He said that Toledo had to go. He
13 said, "When we get rid of him, we're going to
14 hang a target on the back of Cecil Warren, on
15 Cecil Warren's back, and --

16 Q. Cecil Warren Diesel Truck Sales?

17 A. Diesel Truck Sales, Saginaw,
18 Michigan. And then at dinner one night we had a
19 conversation, and Mike Bollens was a dealer
20 development guy, and Mike Bollens said that we
21 had to get rid of four dealers in Ohio at
22 dinner.

82. PAGE 416:08 TO 416:20 (RUNNING 00:00:42.600)

08 Q. Sir, did Mack use the manipulations
09 of the sales assistance process at Mack that
10 we've -- that you've testified to to the
11 disadvantage of the dealers identified for
12 consolidation under Network 2000?

13 MR. HEEP: Objection, no foundation.

14 A. Could you -- could you repeat that?

15 Q. Sure. Did Mack use the
16 manipulations of the sales assistance process
17 that we've discussed here this evening to the
18 disadvantage of the dealers targeted for
19 consolidation under Network 2000 by Jeff

20 Yelles?

83. PAGE 416:23 TO 416:23 (RUNNING 00:00:02.000)

23 A. I think they did.

84. PAGE 421:20 TO 421:24 (RUNNING 00:00:14.100)

20 Q. Did Jeff Yelles ever tell you that
21 you needed to create a paper trail through
22 contact reports and written communications to
23 build a case for dealers targeted for
24 elimination under Network 2000?

85. PAGE 422:02 TO 422:12 (RUNNING 00:00:20.700)

02 A. Jeff Yelles told me with my contact
03 reports, "We need those. I want you to write
04 those. And we need to start building cases. "
05 That's what he told me. Those were his words.

06 Q. What did you understand to mean
07 "building cases"?

08 A. Against the dealers that he felt
09 were nonperformers and the dealers that had to
10 go away.

11 Q. Okay. And what was Mack going to do
12 with those documents, if you understand or not?

86. PAGE 422:14 TO 422:23 (RUNNING 00:00:40.500)

14 A. Well, someone, I think they did
15 something with them, but, I mean, I think they
16 were going to use them against that dealer -- I
17 don't know whether you would call it a
18 termination proceeding or whatever, to get the
19 dealers to give their franchises back or go out
20 of business.

21 Q. Did Mack extend any special, unique
22 deals or terms on the sale of new trucks to
23 Dallas Mack?

87. PAGE 423:01 TO 424:19 (RUNNING 00:01:47.200)

00423:01 Q. Have you ever heard that?

02 A. I heard that. That was suspected,
03 and I'll finish. That was suspected by a lot of
04 dealers that Dallas Mack was on at different
05 times, even body program trucks that the
06 different dealers were on.

07 However, John Tanzos called me. He
08 initiated the call, and told me that he had a
09 call from Toledo Mack, and Toledo was asking a
10 question about Dallas Mack.

11 And he went on to say, "You know, we
12 give their banks deals on trucks and terms, and
13 then after six months, if he doesn't sell them,
14 he has to put them on the Dog Catcher, but he
15 says Toledo is probably just fishing for
16 information.

17 That -- that was sort of what he
18 said about fishing for information. It was in
19 that vein, is what he said.

20 Q. Did he say anything about --

21 A. I have a note to that effect in one
22 of my documents, by the way, so the exact
23 wording is there.

24 Q. Do you remember him saying anything
00424:01 in that conversation about delaying the billing
02 on trucks to Dallas Mack?

03 A. Yeah. He said they do delayed
04 billing and extended floor plan, and then after
05 six months, they have to put them on Dog
06 Catcher, and then they invoice them for the
07 trucks. That was John Tanzos. And John Tanzos
08 called me. I had nothing to do with that call.

09 Q. Who, at the time was, John Tanzos
10 with Mack Trucks?

11 A. John Tanzos was in the COF group,
12 customer order fulfillment, and I don't know if
13 he was a manager or a director, but he was
14 probably one of those titles.

15 Q. And that's the customer order
16 fulfillment within Mack Trucks?

17 A. Yes.

18 Q. Did Mack allocate certain customers
19 to certain Mack dealers?

88. PAGE 424:21 TO 424:23 (RUNNING 00:00:06.100)

21 A. In the grand scheme of things, I
22 think they did, I mean via discounts and
23 whatnot.

89. PAGE 430:10 TO 431:12 (RUNNING 00:00:52.500)

10 Q. Let me ask you about another
11 statement you just made. You mentioned another
12 situation where somebody said something about
13 not allowing Chicago Mack to fail.

14 A. Yes.

15 Q. Can you tell me about that?

16 A. That was George Paven, and I was in
17 his office when he made that statement, that he
18 was told by -- and I believe it was Paul Vikner
19 -- that he was not allowed to let Chicago -- he
20 had to do whatever it took. He could not let
21 Chicago Mack fail.

22 Q. Who is Paul Vikner at the time?
23 What was his position?

24 A. He -- I don't know that he was
00431:01 president. He may have been executive vice
02 president of sales. I forget. I forget that
03 time line there.

04 Q. And that was --

05 A. And George Paven -- Paul Vikner
06 hired George Paven into that regional VP
07 position.

08 Q. Paul Vikner was George Paven's boss
09 at the time?

10 A. Yes. So he probably would have been
11 executive vice president of sales, yeah, like,
12 Kevin Flaherty is.

90. PAGE 432:22 TO 432:23 (RUNNING 00:00:05.100)

22 Q. Was Bulkmatic a customer that Mack
23 allocated to a certain Mack dealer?

91. PAGE 433:04 TO 433:11 (RUNNING 00:00:22.700)

04 A. Bulkmatic was a customer that was

05 in, I believe, Mack, Pozzo Mack's AOR, and was
 06 purchasing from Chicago. I had a dealer who
 07 contacted them, and I -- I was told they
 08 shouldn't be doing that, I guess. That's in
 09 some transcript somewhere.
 10 Q. Well, do you believe that Bulkmatic
 11 was allocated to Chicago Mack?

92. PAGE 433:14 TO 433:14 (RUNNING 00:00:01.100)

14 A. Yeah, I do.

93. PAGE 456:23 TO 457:13 (RUNNING 00:00:45.100)

23 Q. Now, turning back to the types of
 24 abuses and types of sales assistance that we
 00457:01 testified and the discrimination against dealers
 02 that arose out of it, did you ever tell anyone
 03 at Mack that you thought that the types of
 04 discrimination that Toledo Mack and Wiegand Mack
 05 are suing Mack over, were, in fact, happening?
 06 MR. HEEP: Objection.
 07 A. I complained to Jeff Yelles about
 08 sales assistance all the time. The dealers felt
 09 they weren't being treated fairly, they weren't
 10 getting the discount they deserved.
 11 And I also told Mack's counsel that
 12 on the very, very first -- one of the very first
 13 phone calls I ever talked to him.

94. PAGE 464:18 TO 465:17 (RUNNING 00:01:02.500)

18 Q. (By Mr. Parks) Sir, can you turn to
 19 the second page of the exhibit under Mr. Jeff
 20 Yelles. Do you see that there?
 21 A. Yes.
 22 Q. And I'm going to start at the
 23 beginning of that paragraph and skip down. It
 24 says: Mr. Yelles will testify about his
 00465:01 substantial efforts to persuade Mr. Lusty to
 02 provide false testimony and to "get his story
 03 straight" with the testimony of other Mack
 04 employees.
 05 Do you see that?
 06 A. Yes.
 07 Q. Did Mr. Yelles engage in substantial
 08 efforts to persuade you to provide false
 09 testimony under oath in the Toledo Mack
 10 litigation?
 11 A. I believe he did.
 12 Q. Did Mr. Yelles engage in substantial
 13 efforts to instruct you to "get your story
 14 straight" with the testimony of other Mack
 15 employees with respect to the Toledo Mack --
 16 your testimony in the Toledo Mack litigation?
 17 A. Yes.

95. PAGE 468:04 TO 468:13 (RUNNING 00:00:17.600)

04 Q. Sir, did you testify truthfully in
 05 the Toledo Mack litigation?
 06 A. Yes.
 07 Q. On every instance when you testified
 08 in that litigation?
 09 A. Yes.

10 Q. Do you believe you were fired by
 11 Mack for testifying truthfully in the Toledo
 12 Mack litigation?
 13 A. Yes.

96. PAGE 468:19 TO 469:04 (RUNNING 00:00:16.200)

19 you another one. At the beginning of the
 20 deposition or earlier in the deposition Mr. Heep
 21 referenced a settlement. Has your case been
 22 settled with Mack?
 23 A. Can I talk to my attorney?
 24 Q. Sure.
 00469:01 MR. EPSTEIN: You can answer that.
 02 That yes or no question, you can answer.
 03 THE WITNESS: Oh.
 04 A. Yes.

97. PAGE 482:24 TO 488:19 (RUNNING 00:06:17.200)

24 Q. Mr. Lusty, you testified earlier
 00483:01 about what your understanding was of verbals.
 02 A. Uh-huh.
 03 Q. You have to say yes or no.
 04 A. Yes.
 05 Q. Do you know of any case or specific
 06 instance where Wiegand Mack has lost a sale
 07 because of the verbal that was given to some
 08 other dealer?
 09 A. I wouldn't know if they did because
 10 I wouldn't know who gave the verbal at that
 11 point. If I had the documents to review, we
 12 could cross-check that sales assistance what was
 13 actually issued. Without the documents, I can't
 14 answer that.
 15 Q. And what -- what documents would you
 16 use?
 17 A. All of the -- all of the sales
 18 assistance for that particular customer, whether
 19 it was in Wiegand's AOR, or another dealer's
 20 AOR, wherever that was, wherever sales
 21 assistance was issued throughout the country by
 22 that district manager and/or through Steve
 23 Polzer's office.
 24 Q. Uh-huh.
 00484:01 A. And you'd see whether there was
 02 something established. And sometimes people
 03 will write in there there was a verbal given,
 04 and by questioning the original vice presidents
 05 under oath.
 06 Q. Okay.
 07 A. Or district managers. I'm sorry.
 08 Q. Same question for Toledo Mack: Do
 09 you know of any situation where Toledo Mack lost
 10 sales to another Mack dealer because of a verbal
 11 that was given?
 12 A. There's -- there's some questionable
 13 deals there. Specifically I have not seen all
 14 the documents, so I can't say yes or no.
 15 Q. And you talked, you gave some
 16 testimony about the use of false names by
 17 certain dealers in order to get sales
 18 assistance. Do you remember that testimony?

19 A. Not -- not about false names. The
 20 names are probably real. They may be a
 21 customer's name.

22 Q. I see.

23 A. But they're not false names.
 24 There's not fictitious names they just picked
 00485:01 out of the phone book. They would order -- if
 02 there was an ABC Trucking n your area, they may
 03 order trucks under ABC Trucking and get sales
 04 assistance and have those net bills, and that
 05 will affect the amount of floor plan on -- on
 06 each of those units.

07 Q. I see. Do you know of any situation
 08 in which Wiegand Mack has been disadvantaged by
 09 some dealer using that technique?

10 A. If there was a technique used, if
 11 that technique was used by any dealer, they may
 12 have lost a deal I'm not aware of, but that
 13 dealer would certainly have an advantage to
 14 advertise those trucks at a lower price or do
 15 some of the things we want.

16 So specific deal, I can't come up
 17 with until I see all the paperwork or documents,
 18 but, in theory, that could happen.

19 Q. And what are -- what are the
 20 documents you'd look at there? Again, sales
 21 assistance, customer -- the dealer TII report
 22 when it goes down and whether the truck shows
 23 sold or unsold, and we would have to verify if
 24 that was, in fact -- I mean somebody at Mack
 00486:01 Trucks, Steve Polzer or somebody would have that
 02 information.

03 Q. Then you gave some testimony about
 04 -- oh, I'm sorry. Let me ask the same.

05 Do you know of any situation in
 06 which Toledo Mack -- specific situation in which
 07 Toledo Mack was specifically disadvantaged by
 08 the practice that you just described?

09 A. By a verbal?

10 Q. No; the use of a name of a customer
 11 before a deal is actually in process.

12 A. I would have to look at the
 13 documents of every deal that he was on, compare
 14 to the documents of the dealer he was up
 15 against, and I think -- and I think that can be
 16 tracked. I think that that can.

17 Q. Okay. But sitting here today, you
 18 don't know of any.

19 A. Right.

20 Q. Now, you also testified about a
 21 practice where sales assistance -- the sales
 22 assistance level might change sometimes,
 23 depending on the quantity of trucks ordered.

24 A. That's a possibility.

00487:01 Q. Do you know of any situation either
 02 Toledo Mack or Wiegand Mack was disadvantaged by
 03 that practice?

04 A. I didn't get to see the internal
 05 paperwork on Gold Kist where those numbers
 06 originally started. There was -- are you
 07 thinking Wiegand or today?

08 Q. Either one.

09 A. Either one. If we were to review
10 the P-Jax sales assistance request, possibly the
11 Bolus, I would have to look at those. It's been
12 such a long time since I've seen them. Some of
13 those quantities, I believe, changed along the
14 way, and that -- and those are deals that
15 happens on, anything can happen.

16 Q. The P-Jax deal ultimately went to
17 Sterling; right?

18 A. Some of it went to Sterling. I
19 don't know if they bought the exact number. I
20 would have to see. I haven't looked at those
21 documents, Jeremy, in a long time.

22 Q. Okay. And did anyone at P-Jax or
23 Bolus ever tell you that they would have bought
24 from or Wiegand Mack -- I guess just Toledo Mack
00488:01 because Wiegand Mack wasn't involved -- would
02 have bought from Toledo Mack if they had gotten
03 a better price or more timely answers?

04 A. If I'm not mistaken, I believe it
05 was P-Jax sent a memo to Dave Yeager stating
06 that if he could do this on this, X on X
07 quantity, he would buy Macks and cancel -- it
08 was either Sterling or International.

09 I can't remember. I don't want to
10 say the wrong. But there is something to that
11 effect in one of those documents. I don't have
12 that in front of me, so.

13 Q. And other than that particular
14 communication, did anyone at P-Jax or Bolus ever
15 told you that they would have bought from
16 Wiegand Mack or Toledo Mack if they had better
17 prices?

18 A. Not told me; I didn't talk to those
19 people.

98. PAGE 489:15 TO 495:20 (RUNNING 00:07:45.200)

15 Q. You talked about you agreed with
16 what Manly called an early warning system when a
17 DM sometimes notifies a dealer when there's a
18 deal going on in that particular AOR and an
19 out-of-AOR dealer is quoting that deal.

20 A. Yes.

21 Q. Okay. Would you agree with me as a
22 general matter that competition increases when
23 more than one dealer is on a particular deal?

24 MR. PARKS: Objection.

00490:01 A. I never -- I never bought into
02 that. I -- I mean, it could if two people are
03 driving it, but I never bought into that
04 scenario. I don't believe that's the way it
05 ought to work, but that's my own opinion on
06 that.

07 Q. You think -- you don't think that
08 having multiple dealers on one deal is more
09 competition than having only one dealer on a
10 deal?

11 A. Jeremy, you could be right. If they
12 did that, why don't they net price all the
13 trucks out and let all the dealers sell the
14 trucks. I agree with you on that. I think that

15 would be the way to do it, net the trucks out.
 16 My -- the more dealers on that deal that had net
 17 pricing, I think the customer would be better
 18 served with it.

19 Q. Wouldn't you agree that the effect
 20 of having more than one dealer on the deal would
 21 be -- or could, at least could be, to drive the
 22 price down as they try to beat each out of the
 23 deal?

24 A. If they both started with the same
 00491:01 price up front.

02 Q. Okay. You talked about some
 03 general agreements that you heard -- I'm sorry,
 04 you heard conversations somewhere where
 05 gentlemen, someone mentioned gentlemen
 06 agreements between dealers to stay in their own
 07 AORs.

08 A. Yes; including Mack district
 09 managers that said that about some dealers, "Oh,
 10 they have a gentlemen's agreement."

11 Q. Okay. Where were you when you heard
 12 those conversations?

13 A. Various locations: Sometimes at the
 14 dealer, sometimes at a Mack meeting, sometimes
 15 at a dealer function, either a Mack dinner --

16 Q. Tell me, well, what -- actually,
 17 before we do that, what dealers have you heard
 18 at those occasions have gentlemen's agreements?

19 A. I can't give you specific names, but
 20 that was conversations that were overheard.

21 Q. You can't because you don't
 22 remember?

23 A. Yeah, I don't remember.

24 Q. You said that you believed that
 00492:01 Chicago's AOR was protected by Mack through the
 02 manipulation of the sales assistance system; is
 03 that right?

04 A. Yeah.

05 Q. Can you give me any examples of when
 06 that's happened?

07 A. I -- well, it happened with Fort
 08 Wayne Mack when they were in business. I can't
 09 give you the specific deal, but, again, if I saw
 10 -- if I could have access to all the documents,
 11 I could follow the trail. I know I could.

12 Q. Fort Wayne Mack, was that one -- was
 13 that part of Chicago Mack at one point?

14 A. No. It is now.

15 Q. Oh, it is now.

16 A. VoMack, it might not still be
 17 VoMack, but it was VoMack.

18 Q. Sitting here today without the
 19 benefit of all those documents, can you give me
 20 any example of when Fort Wayne Mack, Chicago,
 21 Flag City, Nextran, Gabrielli, or Central
 22 Indiana Mack had its AOR protected through the
 23 manipulation of the sales assistance system?

24 A. Every one of those sales assistance
 00493:01 -- I shouldn't say every one, but a number of
 02 those businesses from Toledo Mack that went over
 03 to Ed Bolus and in the eastern region, there was
 04 either a delay or it was manipulation of the

05 sales assistance program.

06 And if I saw the documents, if you
07 laid them out here, and I'm positive there were
08 some equipment companies over there. There were
09 a number of deals, and I can't remember. It was
10 just -- it just seemed like it was constant.

11 Q. Okay. But it's fair to say, at
12 least sitting here today without the benefit of
13 all of those documents in front of you, that you
14 can't think of a single instance where the sales
15 assistance system was manipulated specifically
16 to protect the AOR of Fort Wayne, Chicago Mack,
17 Flag City, Nextran, Gabrielli or Central
18 Indiana.

19 A. I have been out of this for well
20 over a year now, and I don't have a real
21 recollection of each deal.

22 Q. Okay. Now, you testified earlier
23 when I was asking questions that dealers
24 regularly sell outside their AORs and other
00494:01 dealers -- and some dealers sell inside other
02 dealers' AORs on a fairly regular basis.

03 And then when Manly was asking you
04 questions, I think that you said that you
05 thought that dealers were generally granted more
06 sales assistance when they were asking for sales
07 assistance for a customer in their AOR, more
08 than when they were asking for sales assistance
09 for a customer outside of their AOR. Was that
10 right?

11 A. That has happened, yes.

12 Q. And I can't -- I can't remember --
13 Manly was asking whether that had happened
14 systematically or not. I can't remember what
15 answer you gave.

16 Regardless of that, can you tell me
17 of any instance where that's happened?

18 A. Without reviewing the deals, again,
19 I'd have a hard time recalling that. It's
20 happened, and it's -- it's not on every deal.
21 Sometimes it's selective deals, but it has
22 happened.

23 Q. Okay.

24 A. And -- that's it.

00495:01 Q. Okay. I might have asked you this
02 earlier, but in light of the examination by
03 Manly, has -- net-net billing, using it the same
04 way that we've described the term here, can you
05 tell me of any dealer anywhere at any time that
06 has ever lost a deal because of net-net
07 billing?

08 A. I can't remember all the deals. I
09 mean, not all the deals that happened to, but
10 there were some. I -- I can't recall those
11 names right now.

12 Q. Okay.

13 A. It would be an easier question to
14 ask if I knew what deal he got the net-net
15 billing, and then I could compare them to the
16 deals he lost. I could probably tell you if
17 they have an advantage.

18 Q. Okay. But without that information

19 here, you can't think of any.
 20 A. Not any specific deals.

99. PAGE 498:13 TO 500:13 (RUNNING 00:01:58.000)

13 Q. Did -- you made mention of a
 14 statement, I guess, again by Jeff Yelles that:
 15 We would have to get rid -- or that Mack would
 16 have to get rid of four dealers in Ohio.

17 A. No. That was statement was made by
 18 Mike Bollens in dealer development in a dinner
 19 with Jeff Yelles and I. We met with Northern
 20 Ohio Truck Center, and we were at Johnny's
 21 Restaurant on Fulton Avenue in Cleveland when
 22 Mike said that.

23 Q. Okay. And those dealers were
 24 Northern Ohio, Youngstown and who else?

00499:01 A. No, I didn't say that. I think
 02 Manly asked me a question.

03 Q. Okay. Who were those four dealers?

04 A. He didn't say. He said we had to
 05 get rid of four dealers in Ohio.

06 Q. Okay. Did he -- did he explain what
 07 he meant when he said get rid of four dealers in
 08 Ohio?

09 A. We needed to get rid of four
 10 dealers, that's what he said.

11 Q. Right. But did he explain what he
 12 meant, in other words, whether he meant that
 13 four dealers in Ohio would have to be
 14 involuntarily terminated, or four dealers in
 15 Ohio would have to be bought out by some other
 16 dealers?

17 A. We were in Northern Ohio, and Tim
 18 Watson had requested a visit from them for him
 19 to tell them his plan and what he wanted to do.
 20 And they were talking about -- Jeff and him were
 21 talking about Tim Watson's deal, and that's when
 22 Bollens said that we have to get rid of four
 23 dealers in Ohio.

24 And I didn't butt in because he was
 00500:01 talking to Jeff Yelles.

02 Q. Uh-huh.

03 A. I mean, I wasn't engaged in that
 04 conversation at that point.

05 Q. Right. And you didn't -- and you
 06 didn't hear him explain what he meant by that,
 07 did you?

08 A. No, not beyond that.

09 Q. Okay. And other than Toledo Mack,
 10 do you know of any involuntary terminations of
 11 any dealers in Ohio, any steps to involuntarily
 12 terminate?

13 A. Oh, no.

100. PAGE 501:23 TO 503:12 (RUNNING 00:01:38.600)

23 Q. Sorry. There's a note I'm having
 24 trouble reading my handwriting on where we
 00502:01 talked about a dealer that was fishing for
 02 information. Duane Building -- maybe it was
 03 Dallas. It was Dallas Mack. You talked about
 04 you thought there were some special unique deals

05 made to Dallas Mack.

06 A. No, I didn't think. John Tanzos
07 told me there was.

08 Q. Did you -- did -- have you ever
09 talked to -- well, do you know of any lost sales
10 to either Wiegand Mack or Toledo Mack as a
11 result of any special unique deals to Dallas
12 Mack?

13 A. Well, Dallas Mack sold through B & C
14 Body Company, so I'd have to see if they lost
15 any deals for B & C Body Company or Dallas
16 Mack. So without looking at the records, I
17 can't recall that.

18 Q. Do you know whether Wiegand Mack
19 ever tried to sell to B & C Body Company?

20 A. B & C was owned by Aaron -- Arlen
21 Campbell and Bill Bankman.

22 Q. Right. I'm sorry. I thought you
23 were saying you'd have to look and see if they
24 lost sales to B & C Body Company.

00503:01 A. I would have to see who B & C sold
02 to --

03 Q. I see.

04 A. -- and compare the notes, and I
05 don't have that information.

06 Q. Okay. So sitting here today you
07 don't know of any.

08 A. Can't answer that.

09 Q. By "any" I mean any lost sales to
10 either Toledo Mack or Wiegand Mack by these
11 special unique deals to Dallas Mack.

12 A. Correct.

101. PAGE 505:24 TO 506:15 (RUNNING 00:00:48.100)

24 Q. We talked about a conversation with
00506:01 George Paven where he told you that he was told
02 by Paul Vikner to do what it takes to make -- to
03 not let Chicago Mack fail.

04 A. Yes.

05 Q. Okay. Do you know of any specific
06 actions taken by Mack Trucks not to let Chicago
07 Mack fail?

08 A. I have not been privy to that, so I
09 can't tell you.

10 Q. Okay. You talked about Bulkmatic,
11 and you thought Bulkmatic was allocated to Pozzo
12 Mack.

13 A. No. Pozzo Mack -- Bulkmatic is in
14 Pozzo Mack's territory, their AOR, and it's sold
15 by Chicago Mack.

102. PAGE 510:17 TO 513:19 (RUNNING 00:03:06.100)

17 Q. Have you -- have you ever talked to
18 anyone at Bulkmatic?

19 A. I don't know anybody at Bulkmatic.

20 Q. Okay. So I take it, do you have any
21 information -- you don't have any information,
22 directly or indirectly, from Bulkmatic that
23 suggests they wanted to buy from Toledo Mack, do
24 you?

00511:01 A. No.

02 Q. Okay. Now, you also talked about
03 Superior Services.
04 A. Yes.
05 Q. And I think -- I think you said you
06 thought that Superior Services is allocated to
07 Madison.
08 A. Yes.
09 Q. That's Madison Mack.
10 A. I guess that's what they go by.
11 It's part of the Milwaukee group.
12 Q. Part of the Milwaukee group. Is
13 Superior Services located in Madison Mack's AOR?
14 A. They're north of there. I -- I
15 assume they are. I mean, they're not right in
16 Madison but they're north of there.
17 Q. So you don't -- do you know one way
18 or the other sitting here today?
19 A. I'd have to look at the map and see
20 where they are in the city, and I don't have the
21 -- I don't recall that.
22 Q. Okay.
23 A. I mean, I went there. I called on
24 them myself a long time ago and I went there
00512:01 with Madison Mack, so I assume that was Madison
02 Mack's territory.
03 Q. Now, have you ever talked to anyone
04 at Superior Services?
05 A. Yeah, I talked to Jim Kennedy.
06 Q. Did Jim Kennedy ever tell you that
07 he wanted to buy trucks from either Toledo Mack
08 or Wiegand Mack?
09 A. No.
10 Q. Okay. Now, you talked about Florida
11 Rock, and you said you thought Florida Rock was
12 allocated to Nextran.
13 A. Yes.
14 Q. All right. You don't know anything
15 about the -- or do you? Do you know anything
16 about the arrangement between Nextran and
17 Florida Rock?
18 A. I do not.
19 Q. Okay.
20 A. Mack doesn't publish a list of that
21 or I would have.
22 Q. And have you ever -- have you ever
23 talked to anyone at Florida Rock?
24 A. I don't know anybody there.
00513:01 Q. Okay. Anyone, either directly or
02 indirectly, tell you from Florida Rock, directly
03 or indirectly tell you that they would have
04 bought from Toledo Mack if Toledo Mack had
05 better pricing?
06 A. I never spoke to anyone there.
07 Q. Okay. Then you said you think
08 Kimble Mixer was allocated to Allied Truck
09 Sales.
10 A. Yes.
11 Q. Is Kimble in Allied Truck Sales'
12 AOR?
13 A. I believe they are. I think that's
14 the Dover area.
15 Q. Okay. Did anyone from Kimble ever

16 tell you that they wanted to buy from Toledo
17 Mack or Wiegand Mack?
18 A. No. Toledo Mack got a letter to
19 that effect.

103. PAGE 517:12 TO 517:17 (RUNNING 00:00:12.600)

12 Q. Okay. My only point is you don't
13 have any information sitting here today to know
14 whether that's true or false, that Mr. Kimble
15 himself had requested a letter from himself
16 before releasing any discounts?
17 A. That's true.

104. PAGE 519:14 TO 523:20 (RUNNING 00:04:15.100)

14 Q. Now, I thought earlier today when I
15 was asking you questions, you said you didn't
16 know what prices national accounts -- except
17 when you were a national accounts manager
18 sometime in the 1980s, you didn't know what
19 prices national accounts bought from Mack
20 Trucks; is that right?
21 A. I don't understand the question, I
22 think.
23 Q. I thought I heard -- I thought when
24 I was asking you questions earlier today --
00520:01 A. Uh-huh.
02 Q. -- you said that except when you
03 were a national accounts -- in national accounts
04 in the 1980s, that you didn't have any idea of
05 national account pricing.
06 A. I'm not privy to national account
07 pricing.
08 Q. And that includes McClain, Ryder,
09 Penske, Waste Management, McNeilus, Heil. You
10 don't know -- while you were the district
11 manager, you didn't know what their pricing was;
12 right?
13 A. Some of the dealers were on deals,
14 lost to them or were competing with them and
15 said they were thousands of dollars less. I did
16 not see an invoice.
17 Q. Well, but they sell, at least
18 McNeilus, Heil and McClain, sold completed
19 units, right, with the bodies on them?
20 A. Yeah, they did sell completed units.
21 Q. So if they were -- I mean, they
22 built the body themselves. That's why they're
23 called body builders.
24 A. Yes.
00521:01 Q. So if they're selling a completed
02 unit with the chassis and body together, you
03 don't know one way or another how they're
04 arriving at their prices thousands of dollars
05 less if you're not privy to Mack's pricing;
06 right?
07 A. Correct.
08 Q. And so without having that
09 information, you could not accurately say that
10 the price that's -- that a price differential to
11 those national accounts placed Wiegand at a
12 disadvantage.

13 A. Not necessarily, because I sent the
 14 e-mails to Joe Favia on some of those accounts,
 15 and he responded that this is their discount,
 16 and that will get you close. Or this is it;
 17 it's confidential, and I never told anybody
 18 that. And the discounts were greater than what
 19 the dealers were getting.

20 So there was some -- did I see the
 21 actual dollar, net dollar figure of the truck?
 22 No. But the discounts, you could calculate the
 23 discounts.

24 Q. So there were some, we'll call them,
 00522:01 isolated instances where you did have some
 02 knowledge of some pricing sometimes.

03 MR. EPSTEIN: Object to the
 04 characterization.

05 Q. Just answer the question. I'm
 06 trying to get there.

07 A. And NationaLease pricing, when it
 08 came into the Parrish leasing deal, I ultimately
 09 got that. I saw that, and it was a lot more
 10 than what the Mack dealer was getting.

11 Q. Okay.

12 A. So there was -- there was several
 13 instances that I saw, and with the pricing of
 14 the total package, you could assume that they
 15 were -- there was a better discount they were
 16 getting. But I did specifically see several of
 17 those truck prices.

18 - Q. And -- and sometimes Mack offers --
 19 from time to time, while you were district
 20 manager, sometimes Mack offered special programs
 21 for vocational trucks at special discounts to
 22 dealers; is that right.

23 A. A special program discount, yes.

24 Q. And you wouldn't know one way or
 00523:01 another, since you don't know what the pricing
 02 was to the body builders, you wouldn't know one
 03 way or another whether those -- that special
 04 program pricing in any particular program was
 05 better or worse.

06 A. Yes. If I compared it to some of
 07 Joe Favia's e-mails, and those prices, yes, or
 08 the NationaLease program, I could pretty much
 09 tell you they were better.

10 Q. If you sat down at a particular time
 11 and you knew exactly what the program was at
 12 that particular time, you could do that
 13 analysis; right?

14 A. If I knew what the program and/or
 15 the regular price and discount or average sales
 16 sales assistance was, yes.

17 Q. And without that information, you
 18 really can't just do that; correct?

19 A. I don't think I ever did that.

20 Yeah, I think you're right.

105. PAGE 531:04 TO 533:09 (RUNNING 00:02:28.900)

04 Q. Okay. Did -- how did you -- did you
 05 meet with Manly Parks in preparation for today's
 06 deposition?

07 A. I met with Manly yesterday.
 08 Q. For how long?
 09 A. I don't know how many hours, but
 10 more than a couple of hours. We had lunch.
 11 Q. You began your meeting before lunch
 12 and you met through lunch?
 13 A. Yeah.
 14 Q. Do you remember when you ended your
 15 meeting?
 16 A. No. Because I left here, and I had
 17 some car repairs done.
 18 Q. Okay. What did you discuss with
 19 Manly?
 20 A. Some of the documents that we looked
 21 at today.
 22 Q. And what else?
 23 A. Documents and the questions he would
 24 ask me.
 00532:01 Q. Did you look at documents together
 02 and explain to him what you thought the
 03 documents meant?
 04 A. I looked at some documents, but I
 05 don't think I explained what I thought they
 06 meant. I mean, I was sitting there, and he was
 07 asking me some questions, but I didn't examine
 08 documents and go line for line and say: That's,
 09 you know, what I think.
 10 Q. Did you talk about how you would
 11 answer questions?
 12 A. Not how I would answer questions.
 13 He asked me some questions, and I answered them.
 14 Q. Did -- did you help him come up with
 15 some questions?
 16 A. He may have made notes. I didn't
 17 give him any questions to ask.
 18 Q. He seems to have learned an awful
 19 lot of information. I take it that this is
 20 information that you provided him?
 21 A. We talked about a lot of things, and
 22 if he took notes, he took notes, I mean.
 23 Q. And who's paying your expenses for
 24 being here today?
 00533:01 A. Me.
 02 Q. Including all travel?
 03 A. Yes.
 04 Q. And hopefully not lodging.
 05 A. Pardon me?
 06 Q. I said all travel and hopefully not
 07 lodging.
 08 A. I'm paying for my own lodging, as I
 09 did for the Ohio termination thing.

TOTAL: 1 CLIP FROM 1 DEPOSITION (RUNNING 01:58:34.734)